(1) (3)

समक्ष छत्तीसगढ़ उच्च न्यायालय बिलासपुर (छ0ग0)

याचिका क्रमांक 1939 I 06

याचिकाकर्ता

डी0पी0 शराफ उम्र 48 वर्ष
पिता खटाबंद शराफ क्वा0न0 ई -22
15 ब्लाक एस0ई0सी0एल0 कालोनी
कोरबा (छ0ग0)

P.R. No. 2850/06
Presented by Shri J.N. Pasrija
dated 13/6/06

विरुद्ध

उत्तरवादी -

भारत पेट्रोलियम कार्पो0लि0 4 एवं 6
भारत भवन बेल्लार्ड इस्टेट, करीम भाई रोड,
मुम्बई
द्वारा- आम मुख्तियार बी कृष्णमूर्ति
टेरोटरी मैनेजर भारत पेट्रोलियम
कार्पोरेशन लिमिटेड भिलाई डिपो
बिजली नगर , भिलाई -3 जिला दुर्ग (छ0ग0)

याचिका अंतर्गत संविधान के अनुच्छेद 14 एवं 226 के अन्तर्गत

HIGH COURT OF CHHATTISGARH AT BILASPUR

Division Bench:
Hon. Shri Fakhruddin and
Hon. Shri Dhirendra Mishra, JJ

W.P. PR No. 2850 of 2006

PETITIONER : D.P. SARAF

VERSUS

Bharat Petroleum Corp. Ltd. 4 & 6 Bharat Bhawan, Ballard Estate, Kareem Mai Road, Mumbai

ORDER

(Passed on 30-8-2006)

The instant petition is listed for hearing on the question of maintainability.

The petitioner by the instant petition has challenged the order dated 23/2/2006 passed by this Court in Second Appeal No. 16/2006 by which the appeal preferred by respondent herein has been admitted for hearing after formulating the substantial questions of law and the execution of the decree so far as it relates to the possession has been stayed.

Learned counsel for the petitioner submits that though the writ petition is directed against the order passed by this Court in a Second Appeal, yet the same is maintainable as even after the order of the High Court, copy of the appeal memo was not provided to him thereby he was deprived of his right of equality in securing justice.

Citing judgment of the Supreme Court in the matter of **Union of India Vs. S.B. Vohra** reported in **2000(2) SCCD 765**, the petitioner submits that writ of mandamus is a most extensive remedial measure to prevent disorder from a failure of justice and is required to be granted in all cases where no specific remedy is provided. He further relied on the decision of the Supreme Court in the matter of **Syed Yakoob Vs. Radhakrishnan and others** reported in **AIR 1964 SC 477** and submitted

that a writ of certiorari can be issued for correcting jurisdictional errors committed by inferior Court or Tribunals. Further placing reliance on the judgment of the Supreme Court in the matter **Rajeshwari Vs. Puran Indoria** reported in **2005(3) SCCD 1568**, the petitioner submits that a question of law would be a substantial question of law if it directly and substantially affected the rights of the parties and if it was not covered by the decision of the Supreme Court or of the Privy Council or Federal Court. Relying upon the decision of the Supreme Court in the matter of **S.P. Chengalvaraya Nadu (dead) by L.Rs. Vs. Jagannath (dead) L.Rs. and others** reported in **AIR 1994 SC 853**, the petitioner submits that Courts of law are meant for imparting justice between the parties. One who comes to the Court must come with clean hands and process of the Court should not be allowed to be abused. Further relying upon the decision of the Supreme Court in the matter of **Thiagarajan and others Vs. Venugopalaswamy B. Koil and others** reported in **2004(2) SCCD 1044** the petitioner submits that substantial question of law at the later stage cannot be framed without putting the opposite party on notice and without giving proper and fair opportunity to meet the same.

We have considered the judgments cited by the petitioner in support of the petition. This petition is directed against an interim order passed by Learned Single Judge and the second appeal is still pending. Hence the facts referred to in the above cited judgments has no correlation with the facts of this case and as such they are not applicable in this case.

Since the petition is directed against the order passed by this court which admittedly is not subordinate to the High Court the same is dismissed being absolutely without any substance.

Sd/-
Fakhruddin
Judge

Sd/-
Dhirendra Mishra
Judge